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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. ARMANDO VALENTINE SAUCILLO, Defendant and Appellant.	B210096 (Los Angeles County Super. Ct. No. KA077591)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert M. Martinez, Judge. Vacated in part, affirmed in part.

Nancy Mazza for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M. Roadarmel, Jr. and Roy C. Preminger, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Armando Valentine Saucillo, a convicted felon, was arrested after a high speed car chase and shoot-out with California Highway Patrol officers. A jury found defendant guilty of multiple crimes, including three counts of possession of stolen property and the attempted murder of a California Highway Patrol officer, who was critically injured. The jury also found true various weapons allegations against defendant.

On appeal, defendant claims (1) he was improperly convicted of multiple counts of receiving stolen property, (2) the trial court erred in not instructing the jury on eyewitness identifications, (3) the trial court erred in ordering defendant to pay restitution to an insurance company that was not a direct victim of his crimes, and (4) a 25 years to life in prison sentence enhancement constitutes cruel and unusual punishment. We agree with defendant that the trial court could not order him to pay restitution to the insurance company. In all other respects, we are not persuaded by defendant's arguments.

BACKGROUND

1. Factual Background

In the early morning of December 30, 2006, California Highway Patrol Officers Fredricks and Petska were on duty patrolling the 5 freeway in a marked black and white highway patrol car. Officer Petska was driving. As they approached the interchange with the 605 freeway, Officer Petska noticed a tan Lexus SUV (later discovered to have been stolen from Lethe Ward a few days earlier) speeding at about 100 miles per hour. The officers pursued the Lexus onto the 605 freeway, trying to get close enough to see the SUV's license plate. Once close enough, it was clear that the SUV had only "paper plates" and, therefore, the officers could not conduct a computer search of the vehicle's owner or history. The officers then turned on their siren and overhead lights in an attempt to stop the Lexus. Rather than stopping, the Lexus picked up speed, driving up to 125 miles per hour, and maneuvered recklessly around traffic. The officers could not determine the number of occupants in the vehicle. Eventually, the Lexus exited the 605

at Peck Road and promptly crashed into nearby ice plant, creating a cloud of dust and deploying the SUV's air bags.

Officer Petska stopped the patrol car on the Peck Road off-ramp and Officer Fredricks got out of the car. The officers saw two people running from the crashed Lexus into the surrounding area, an industrial part of town. Officer Fredricks climbed back in the patrol car, and the officers drove after the running suspects for a short while.

The officers then exited their car and Officer Fredricks yelled to the suspects to get on the ground. Neither suspect complied. Officer Petska chased after one suspect who wore a white T-shirt. That suspect climbed over a fence and disappeared. Officer Fredricks pursued the other suspect, clad in a blue parka and beanie, who ran up the street. During the chase, the suspect in the blue parka and beanie tripped and fell on the ground. Officer Fredricks, within about eight feet of the suspect, yelled more commands at the suspect. Still, the suspect did not comply. Instead, while sitting on the ground, he repeatedly shot at Officer Fredricks who was in the open without cover. Officer Fredricks fired back 12 times, emptying his gun. As Officer Fredricks began to reload his gun, he fell to the ground. Initially thinking he had tripped, Officer Fredricks eventually realized he had been shot.

After losing sight of the suspect in the white T-shirt, Officer Petska heard gunshots. He turned to see the suspect in blue and Officer Fredricks shooting at each other. Officer Petska began shooting at the suspect in blue, as the suspect jumped up and ran away. Officer Petska fired 20 rounds at the suspect. While pursuing the shooter, Officer Petska saw his partner fall to the ground. Officer Fredricks called out to Officer Petska, who returned to help his partner. The officers radioed for help. Shortly after, their supervisor arrived, followed by many other members of law enforcement, including a K-9 unit.

A perimeter around the area was set up. Officers Fredricks and Petska gave descriptions of the suspects to the other officers. Because of the poor illumination in the area, the officers could only give a general description of the suspects' physical build and clothing. Officer Fredricks described one of the suspects as a white male, wearing a blue

ski parka-like jacket and a blue beanie with a black and yellow stripe at the base, 5 feet 11 inches tall, and 180 pounds. He described the other suspect as wearing a white T-shirt, about 5 feet 11 inches tall, and skinnier than the other suspect, approximately 175-180 pounds. Officer Petska gave similar descriptions of the two suspects, adding that they both wore blue jeans. Officer Fredricks was taken to the hospital where he was treated for a gunshot wound.

A few hours after the shooting, a highway patrol officer guarding a post on the perimeter radioed that he saw a person matching the shooter's description climbing over a chain link fence. Sheriff's deputies, including K-9 handlers and their service dogs, were already searching in the area where the suspect was headed. Upon locating the suspect, the deputies ordered him to lie down with his hands in the air. The suspect reluctantly sat down, but continued to move in such a way so as to suggest to the deputies that he was looking for a place to run. Concerned that the suspect was armed, the K-9 handler ordered his dog to bite the suspect, who resisted and struggled with the dog. At one point, the suspect reached toward his waistband prompting the K-9 handler to punch the suspect several times in the face. The deputies eventually detained the suspect and called paramedics. He was treated for his injuries at a hospital and taken to a sheriff's station for booking. He was identified as defendant.

The other suspect, Manuel Deleon, was arrested later that morning at a truck yard on the other side of the 605 freeway from where defendant was apprehended. Officers brought Deleon to the station where defendant was being held.

Defendant and Deleon were placed in adjoining cells and their conversation was secretly recorded. One of the lead investigators for this case testified that, in the recorded conversation, Deleon can be heard telling defendant "'It was too curvey. You shouldn't have tried to get off. You should have been pressing the gas faster.'" And, in response, defendant can be heard saying "'I was going too slow. I was trying. I was trying,'" but the Lexus was not operating in a manner defendant thought it should.

2. Information

Defendant went to trial on eight counts.[1] Count one charged defendant with willful, deliberate and premeditated attempted murder of a peace officer (§§ 664, subds. (e) and (f), and 187, subd. (a))[2] and included the following firearm allegations: defendant personally used a firearm (§ 12022.53, subd. (b)), defendant personally and intentionally discharged a firearm (§ 12022.53, subd. (c)), and defendant personally and intentionally discharged a firearm, which caused great bodily injury (§ 12022.53, subd. (d)). Count two charged defendant with evading a peace officer (Veh. Code, § 2800.2, subd. (a)) and driving with a willful and wanton disregard for the safety of people and property. Count three charged defendant with taking and driving Lethe Ward's Lexus without her permission. (Veh. Code, § 10851, subd. (a).) Count four charged defendant with assaulting a peace officer with a semi-automatic firearm (§ 245, subd. (d)(2)) and included the following firearm allegations: defendant used a firearm (§§ 12022.53, subd. (b), 12022.5, subds. (a) and (d)), defendant personally used a firearm (§ 12022.53, subd. (b)), defendant personally and intentionally discharged a firearm (§ 12022.53, subd. (c)), and defendant personally and intentionally discharged a firearm, which caused great bodily injury (§ 12022.53, subd. (d)). Counts five, six and seven charged defendant with receiving various specified pieces of stolen property on December 30, 2006. (§ 496, subd. (a).) Count eight charged defendant with possession of a firearm by an ex-felon. (§ 12021, subd. (a)(1).) The information also alleged as to all counts that, at the time of the offenses, defendant was on bail or on his own recognizance in another case. (§ 12022.1.)

Prior to trial, defendant stipulated to the fact that, at the time of his arrest in this case, he was released on bail in another case. Defendant also stipulated that he had previously been convicted of a felony.

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[1] The other suspect, Deleon, is not a party to this appeal. The record does not reveal if he was charged.

[2] Unless otherwise noted, all section references are to the Penal Code.

3. Trial

At trial, investigating officers described the evidence found in and around the crime scene. At the crash scene, detectives found various stolen items inside the Lexus, including designer purses, a box of Remington 10-millimeter ammunition with 10 bullets missing, and more 10-millimeter ammunition in a plastic bag. Defendant's right thumb print was lifted from the rear view mirror of the Lexus and his finger prints were lifted from three CDs found in the Lexus. At the shooting scene, a sheriff's deputy recovered multiple expended 10-millimeter and .40 caliber bullet casings. The .40 caliber casings were consistent with ammunition used by the California Highway Patrol.

At the time of his arrest, defendant was wearing a blue flannel shirt, was sweaty and filthy, and his hands were cut and bleeding. He had a wallet on him, containing over $3,000, a California ID bearing his picture, his birth certificate, various gift cards and a parking ticket. During a cavity search at the station, sheriff's deputies found a diamond ring in defendant's rectum. A gun residue test was also performed on defendant's hands, which showed particles of gunshot residue.

Defendant was apprehended near an abandoned warehouse with about 20 large loading docks. The warehouse area was surrounded by chain link fences and gates and the only other person at the site was a security guard. Between loading docks 12 and 13, the investigating officers found an empty 10-millimeter Glock magazine and an empty ring box. The diamond ring found in defendant's rectum would fit in the ring box found by the loading docks.

A black glove and black wallet were found in the truck yard where the other suspect, Deleon, was apprehended. That wallet contained two credit cards stolen from Kelly Cousimano and a Marriot Hotel key to a hotel room Deleon's mother had rented on December 29. At the time of his arrest, Deleon was wearing only one shoe. The matching shoe was found near the crashed Lexus.

The day after the shooting (New Year's eve), sheriff's deputies and volunteers continued searching the areas surrounding the crime scene for the gun used to shoot Officer Fredricks. During that search, a deputy found hidden in a storm drain near

loading dock number 5 a blue parka and beanie that appeared to be those worn by the shooter. A pair of Raiders gloves were also found in the same area. But no one found the gun that day.

On January 8, 2007, defendant made a call to his mother, in which he somewhat cryptically explained where she could find the gun. The call was recorded and sheriff's deputies used this information to locate the gun, a 10-millimeter Glock, which was hidden close to where the empty Glock magazine had been found. Ballistics showed that this gun fired the 10-millimeter casings found at the shooting scene. Presumably not realizing deputies had already found the gun, defendant had two more recorded conversations with his mother. In both, defendant again tried to explain where he hid the gun.

A sheriff's department criminalist compared defendant's DNA with DNA taken from the gun, the blue parka and the beanie. The criminalist concluded that defendant (but not Deleon) was a contributor of the DNA found on the gun, jacket and beanie. The criminalist also compared Deleon's DNA with DNA from the Raiders gloves found near the shooting scene. She concluded that Deleon (but not defendant) possibly contributed to the DNA on the gloves.

Jeffrey Czubek testified that, between 6:00 p.m. on December 1, 2006 and 4:30 the next morning, two guns and a lock box containing savings bonds were taken from his home in Ontario while he was at work. The guns that were taken from his home were a Glock 10 millimeter and a Smith & Wesson nine millimeter. The gun defendant used to shoot Officer Fredricks was Mr. Czubek's stolen Glock. Mr. Czubek testified that he did not give defendant permission to take his gun.

Lethe Ward testified that her Lexus SUV was stolen sometime between December 26, 2006 and the next morning, December 27, 2006. The car defendant crashed on December 30, 2006 was Ms. Ward's stolen Lexus. Ms. Ward stated that she had not given defendant permission to take her car.

Jacqueline Romero testified that, on the evening of December 28, 2006, items were stolen from her car, which was parked at a home in Downey. Ms. Romero testified that her purse, wallet, several gift cards, a photo album that had held gift cards, and an eyeglass case were all taken from her car without her permission. Many of those same items were found in the crashed Lexus. Ms. Romero said that she had not given defendant permission to take her things.

Kelly Cousimano testified that, sometime between December 28, 2006 and the next morning, December 29, 2006, various items were stolen from her car which was parked at her home in Downey. Ms. Cousimano testified that her purse, checkbook holder and credit cards, a white purse, a black purse, a wallet and an eyeglass holder were all taken from her car without her permission. Many of those same items were found in the crashed Lexus. Ms. Cousimano said that she did not give defendant permission to take her belongings.

Officer Fredricks testified about the injuries he sustained during the shoot-out with defendant. He explained that a bullet had gone through his bladder and damaged his right femoral nerve and sex organs. As a result, he spent six or seven days in the hospital, had to re-learn how to walk and run, lost feeling in his right knee and shin, and can no longer have children. His recovery took a year.

The defense rested without presenting any evidence. Defense counsel argued that defendant was not the person who shot at Officer Fredricks.

The jury found defendant guilty on all charges. The jury also found true all firearm allegations. However, the jury found that the attempted murder (count one) was not willful, deliberate or premeditated.

4. Sentencing

The trial court denied probation on all counts.

On count two (evading a peace officer), the court sentenced defendant to two years in prison as the base term. On count one (attempted murder of a peace officer, plus firearm allegations), the court sentenced defendant to life in prison, consecutive to the sentence on count two, plus a consecutive 25 years to life in prison under section

12022.53, subdivision (d). On Count three (taking the Lexus), the court sentenced defendant to eight months in prison, consecutive to the sentence on count two. On count four (assaulting a peace officer, plus weapons allegations), the court sentenced defendant to nine years in prison plus 25 years to life. The court stayed the sentence on count four under section 654. On count five (receiving stolen property), the court sentenced defendant to eight months in prison to run consecutive to the sentences on counts two and three. As to counts six and seven (receiving stolen property), the court sentenced defendant to two years on each count, to run concurrent with the other sentences. On count eight (felon in possession of a firearm), the court sentenced defendant to eight months in prison.

The trial court also ordered defendant to pay various fines. At the sentencing hearing, the court ordered defendant to pay $25,664.45 in restitution either to Ms. Ward or to her insurance Company, Mercury Insurance Group, for the loss of Ms. Ward's Lexus. (§ 1202.4, subd. (f).) The minute order from the sentencing hearing states "defendant is to make restitution to the victim, pursuant to Penal Code section 1202.4(f), in the amount of $25,664.45, payable to Mercury Insurance Group."

Defendant appealed.

DISCUSSION

1. Receiving Stolen Property

Defendant argues the evidence does not support three separate convictions of receiving stolen property. (§ 496, subd. (a).) Respondent counters that, because the thefts of the stolen items were committed on separate occasions, it can be inferred that defendant received those stolen items on separate occasions.

"The crime of receiving stolen goods consists of either buying or receiving personal property with knowledge that it has been stolen." (*People v. Smith* (1945) 26 Cal.2d 854, 858-859.) The gravamen of the crime is the receipt of the property with guilty knowledge. (*Id.* at p. 859.) It is well settled that a single act of receiving property stolen from several victims on different occasions constitutes only one receiving stolen

property offense. (*Id.* at pp. 858-859; *People v. Lyons* (1958) 50 Cal.2d 245, 275.) Defendant does not dispute that he possessed the stolen property with the guilty knowledge. Rather, he argues that the evidence supports only one conviction (not three) for receiving stolen property.

In *People v. Morelos* (2008) 168 Cal.App.4th 758 (*Morelos*), the court held that, "where the receiving counts involve different property stolen from different victims at different times and where nothing in the record shows [the defendants] received the property on a single occasion, 'the record reasonably supports the inference that appellant[s] received the various stolen goods at different times and in different transactions.'" (*Id.* at p. 763. See also *People v. Bullwinkle* (1980) 105 Cal.App.3d 82, disapproved on another ground in *People v. Laiwa* (1983) 34 Cal.3d 711, 728.)

Similarly, here, the three receiving counts involve different property stolen from different victims at different times and nothing in the record shows that defendant received the property on a single occasion. As a result, we conclude the record reasonably supports the inference that defendant received the various stolen items at different times and in different transactions. Thus, conviction on all three receiving counts was proper.

2. Eyewitness Identification Instruction

Defendant argues the trial court erred in not instructing the jury with CALCRIM No. 315 on the issue of eyewitness identification. CALCRIM No. 315 provides in part: "You have heard eyewitness testimony identifying the defendant. As with any other witness, you must decide whether an eyewitness gave truthful and accurate testimony. In evaluating identification testimony, consider the following questions: [for example, how the conditions might have affected the witness's ability to observe, whether the witness was under stress at the time, and how the witness's description of the defendant compares with the defendant]. The People have the burden of proving beyond a reasonable doubt that it was the defendant who committed the crime. If the People have not met this burden, you must find the defendant not guilty." Defendant claims that, had the court instructed the jury with CALCRIM No. 315, the jury could have concluded that the

prosecution failed to prove beyond a reasonable doubt that defendant was the shooter. We are not persuaded.

First, CALCRIM No. 315 was not necessary as there was no eyewitness identification of defendant. Neither Officer Fredricks nor Officer Petska could identify defendant. Because it was still dark with little artificial lighting in the area, the officers were only able to observe the general build and clothing of both suspects. There were no other witnesses to the shooting. As defense counsel put it in closing argument, "we have no identification of my client in this case as being the shooter. Nobody came in this court, testified from the stand there and said that's the person that shot me or that's the person that I saw shooting at Officer Fredricks."

Second, the trial court did not give CALCRIM No. 315 because defense counsel withdrew his request for it. Counsel did not request a modified version of CALCRIM No. 315. The trial court is not required sua sponte to instruct the jury on eyewitness identification. (*People v. Richardson* (1978) 83 Cal.App.3d 853, 862, disapproved on another ground in *People v. Saddler* (1979) 24 Cal.3d 671, 682, fn. 8.) Because defendant did not request CALCRIM No. 315 or a modified version of it, he cannot now complain that the instruction was not given. (See *People v. Alvarez* (1996) 14 Cal.4th 155, 223; *People v. Padilla* (1995) 11 Cal.4th 891, 971, overruled on other grounds in *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1.)

In any event, defendant's identity as the shooter was based on much more than his clothing and build alone. For example, (i) shortly following the shooting, defendant was found in the abandoned warehouse area of the crime scene, (ii) when found, he was filthy and his hands were bleeding, (iii) his prints were found in the crashed Lexus, (iv) he had stolen items on him, which had been stolen with other items found in the Lexus, (v) gunshot residue was found on his hands, (vi) he told his mother where to find the gun, (vii) the bullet casings found at the site of the shoot-out were linked to the gun, and (viii) defendant was a contributor to DNA found on that same gun and in the hidden clothes.

In addition, the jury was twice instructed on factors to consider in evaluating witness testimony, such as the witness's ability to see, hear or otherwise perceive the things about which he or she testified. Indeed, the jury seems to have understood that the officers' descriptions of the suspects were not perfect. For example, the jury heard testimony that the shooter was a white male. And, yet, the jury found defendant guilty of attempted murder despite the fact that he is not a white male.

We conclude there was no error in not instructing the jury with CALCRIM No. 315.

3. Firearm Enhancement

Defendant argues the consecutive 25 years to life sentence enhancement imposed under count one constitutes cruel and unusual punishment in violation of the California and United States Constitutions. Defendant claims the sentence enhancement is grossly disproportionate to the crime and shocks the conscience. We disagree.

"Whether a punishment is cruel or unusual is a question of law for the appellate court, but the underlying disputed facts must be viewed in the light most favorable to the judgment." (*People v. Martinez* (1999) 76 Cal.App.4th 489, 496 (*Martinez*).) The determination of proper penalties is a matter for the Legislature, which is in the best position to evaluate the gravity of different crimes and to make judgments among the different approaches. (*People v. Zepeda* (2001) 87 Cal.App.4th 1183, 1213 (*Zepeda*); *Martinez* at p. 494.) Reviewing courts must grant substantial deference to the Legislature's choices and "[o]nly in the rarest of cases could a court declare that the length of a sentence mandated by the Legislature is unconstitutionally excessive. . . ." (*Zepeda* at p. 1214; *Martinez* at p. 494.)

In enacting subdivision (d) of section 12022.53, the Legislature sought to protect citizens as well as to deter violent crime. (*Zepeda* at p. 1213.) The Legislature determined "that the use of firearms in commission of the designated felonies is such a danger that, 'substantially longer prison sentences must be imposed . . . in order to protect our citizens and to deter violent crime.' The ease with which a victim of one of the enumerated felonies could be killed or injured if a firearm is involved clearly supports a

legislative distinction treating firearm offenses more harshly than the same crimes committed by other means, in order to deter the use of firearms and save lives." (*Martinez* at pp. 497-498.)

Here, on count one, the jury not only found defendant guilty of the attempted murder of Officer Fredricks, but also found true the allegation that defendant personally and intentionally discharged a firearm, proximately causing great bodily injury to Officer Fredricks. Thus, on count one, the trial court properly sentenced defendant to life in prison with the possibility of parole plus a consecutive 25 years to life in prison under section 12022.53, subdivision (d). (§ 12022.53, subds. (a)(17) and (a)(18).) We do not consider this sentence to be cruel or unusual.

We are not persuaded by defendant's argument that the sentence enhancement is improperly based on the defendant's choice of weapon—a firearm. As noted above, the Legislature considers firearm offenses especially heinous and dangerous. We do not disagree with that legislative determination.

Similarly, we are not persuaded by defendant's argument that the 25 years to life enhancement is grossly disproportionate to the instant crime or that it shocks the conscience. Defendant demonstrated his disregard for the safety or life of others. He nearly killed Officer Fredricks and left him unable to have children. We agree with the trial court's assessment of defendant and the crimes he committed: "I can almost understand somebody trying to get away from being caught. But to pull a gun out on a peace officer, somebody that would respond if your mom called or sister or your grandmother or you need it, somebody who's just doing a job, a job that maybe you and I aren't brave enough to do, a guy who goes out and protects people. . . . And you are willing to take that person's life, to engage in a close-up fire fight. What was going through your mind, I don't know. You're either extremely naïve or you're extremely dangerous."

4. Restitution

In addressing restitution for the loss of the Lexus at the sentencing hearing, the trial court ordered "compensation in the amount of $25,664.45 to Mercury Insurance

Group or . . . to Lethe Ward [the owner of the Lexus]."[3] ~(4 RT 2414)~ Defendant argues, and respondent agrees, that the trial court erred in ordering defendant to pay restitution to Mercury Insurance Group ("Mercury") for the loss of the Lexus. We too agree that defendant need not pay restitution to Mercury because, although Mercury suffered a loss due to the theft and destruction of the Lexus, Mercury was not the direct victim of the crime. (*People v. Birkett* (1999) 21 Cal.4th 226, 229 (*Birkett*); *People v. Moloy* (2000) 84 Cal.App.4th 257, 260, fn. 3.) Thus, we reverse that portion of the judgment that requires defendant to pay $25,664.45 in restitution to Mercury.

Nonetheless, we affirm the trial court's alternative restitution order in favor of Ms. Ward. As our Supreme Court has explained, regardless of whether the direct victim of a crime has insurance coverage for the losses sustained as a result of the crime, the perpetrator of the crime shall make full restitution to the victim for the full amount of the loss caused by the crime. (*Birkett, supra*, 21 Cal.4th at p. 246; see also *id.* at p. 247, fn. 19.) "[I]t makes no sense to excuse a defendant from paying restitution simply because of the fortuity that the victim has insurance coverage." (*People v. Sexton* (1995) 33 Cal.App.4th 64, 72, disapproved on another ground in *Birkett, supra*, 21 Cal.4th at p. 247, fn. 20 (*Sexton*); see also *People v. Hamilton* (2003) 114 Cal.App.4th 932.)

Defendant argues, however, that the restitution order of $25,664.45 to Ms. Ward is unsupported. Defendant argues the prosecution never requested restitution on behalf of Ms. Ward and defendant did not have an opportunity to dispute any amount claimed by Ms. Ward. Although defendant is correct that the prosecution sought restitution only on behalf of Mercury, we disagree that the record did not support the restitution order in

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[3] The minute order from the sentencing hearing states "defendant is to make restitution to the victim, pursuant to Penal Code section 1202.4(f), in the amount of $25,664.45, payable to Mercury Insurance Group." To the extent the reporter's transcript and the minute order from the sentencing hearing conflict, we conclude that, in this instance, the reporter's transcript reflects most accurately the court's ruling. (See *Arlena M. v. Superior Court* (2004) 121 Cal.App.4th 566, 570 [when the minute order is in conflict with the reporter's transcript, "the reporter's transcript generally prevails as the official record of proceedings"].)

favor of Ms. Ward. The trial court based the amount of its restitution order on a letter from Mercury, in which Mercury stated it had lost $25,664.45 as a result of the loss of the Lexus. Counsel for defendant had received a copy of that letter and the prosecution noted that Ms. Ward "has been paid off." While defense counsel argued that Mercury was not entitled to restitution, defense counsel did not object to the amount of restitution being claimed. Even when the trial court ordered restitution to Mercury *or* to Ms. Ward in the amount of $25,664.45 based on Mercury's letter, defense counsel did not object. We conclude both that defendant had an opportunity to object to the restitution order in favor of Ms. Ward and that the trial court did not err in basing the restitution amount on the Mercury letter.

Respondent urges us to direct the trial court to order Ms. Ward to reimburse Mercury for any amount of restitution she receives from defendant. We are unaware of any authority to make such an order. Neither this court nor the trial court has jurisdiction over Ms. Ward to order her to do anything. As courts before us have recognized, however, the victim (here, Ms. Ward) and her insurance company are free to work out reimbursement under the terms of their insurance contract. (See *Birkett*, *supra*, 21 Cal.4th at p. 246; *Sexton*, *supra*, at p. 72.)

Disposition

We vacate that part of the judgment requiring defendant to make restitution to Mercury Insurance Group and direct the trial court to clarify the judgment so that defendant is ordered to make restitution to Lethe Ward. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J. ROTHSCHILD, J.